IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL Nos. 961 to 970 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT & 1 - Appellant(s)
Versus
AMBALAL ALIAS AMBUBHAI DAHYABHAI PATEL & 1 – Defendant(s)

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Appearance :

Mr.K.D.Pandya,learned Assistant Government Pleader for Appellant(s) : 1 - 2.
MR AJ PATEL for Defendant(s) : 1,
None for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL

and

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 27/02/2007

COMMON ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

1. Admitted. Mr. A.J.Patel, learned counsel, waives service of notice on behalf of the claimant/claimants in each appeal. Mr.K.D.Pandya, learned Assistant Government Pleader, states at the Bar that the interest of the appellants and that of the respondent No.2 is identical and not in conflict at all. In view of the statement made at the Bar by the learned Assistant Government Pleader, this Court is of the opinion that it is not necessary for the appellants to effect service of notice of admission of these appeals upon respondent No.2. Having regard to the facts of the case,the appeals are taken up for final disposal today.

2. By filing the instant appeals under Section 54 of the Land Acquisition Act, 1894 (“the Act” for

short) read with Section 96 of the Code of Civil Procedure, 1908, what is challenged is the legality of common judgment and award dated December 31,2004, rendered by the learned Civil Judge(SD), Bharuch, in Land Acquisition Reference Nos.2360 to 2369 of 1997, by which the claimants have been awarded additional amount of compensation at the rate of Rs.16.10 Ps. per sq.mt. for their acquired lands, over and above the compensation offered to them by the Special Land Acquisition Officer at the rate of Rs.3.90 Ps. per sq.mt. by his award dated November 10,1995.

3. The Executive Engineer, Narmada Project, Division No.1/5, Jambusar proposed to the State Government to acquire agricultural lands of village Gajera, Taluka Jambusar, District Bharuch for the public purpose of construction of minor canal under the Narmada Project. On perusal of the said proposal, the State Government was satisfied that the lands mentioned in the said proposal were likely to be needed for the said public purpose. Therefore, a Notification under Section 4(1) of the Act was issued which was published in the Official Gazette on October 20,1994. Thereafter, necessary inquiry was

conducted under Section 5A(2). On the basis of report submitted by the Special Land Acquisition Officer, declaration under Section 6 of the Act was made, which was published in the Official Gazette on May 25,1995. The interested persons were thereafter served with notices for determination of compensation payable to them. The claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs.100/- per sq.mt. However, having regard to the materials placed before him, the Special Land Acquisition Officer by his award dated November 10,1995 offered compensation to the claimants at the rate of Rs.3.90 Ps. per sq.mt. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition Officer was totally inadequate. Therefore, they submitted applications under Section 18 of the Act requiring the Special Land Acquisition Officer to refer their case to the Court for the purpose of determination of just amount of compensation payable to them. Accordingly, the reference was made to the District Court, Bharuch, where it was registered as Land Acquisition Reference Nos.2360 to 2369 of 1997.

4. On behalf of the claimants, witness Bhailalbhai

Ranchhodbhai Patel was examined at Exh.14. The witness mentioned in his testimony that the boundaries of village Uchhad were adjoining to the boundaries of village Gajera from where lands were acquired in the instant case. According to him the lands of village Uchhad were similar to the lands which were acquired in the instant case and had the same price. It was also mentioned by him that the agricultural crops grown on the lands of village Uchhad were also same which were grown on the lands of village Gajera. During the course of recording of evidence, the said witness produced award of the Reference Court dated March 29,1996 rendered in Land Reference Case No.872 of 1987 relating to the lands of village Uchhad and claimed that on the basis of the said award, the claimants were entitled to enhanced compensation. The witness explained to the court that the claimants were entitled to enhanced compensation in view of the decisions of the High Court which were mentioned by him in his testimony. Though this witness was examined by the learned counsel for the acquiring authorities, nothing substantial could be brought on record nor the assertion made by the witness that the lands of village Uchhad were similar to the lands acquired in

the instant case from village Gajera could be demonstrated to be untrue.

5. On behalf of the acquiring authorities no witness was examined at all.

6. On the basis of the evidence adduced by the claimants, the Reference Court was of the opinion that previous award of the Reference Court relating to the lands of village Uchhad was a relevant piece of evidence for the purpose of determining market value of the lands acquired in the instant case. The Reference Court noticed that Notification under Section 4(1) of the Act was published in the Official Gazette on December 8,1983 for acquiring the lands from village Uchhad whereas in the instant case it was published in the Official Gazette on October 20,1994 and as there was time gap of about 11 years, the claimants were entitled to reasonable rise in price of lands at the rate of 10% per annum. In the ultimate analysis, the Reference Court has awarded additional amount of compensation at the rate of Rs.16.10 Ps. per sq.mt. to the claimants by the impugned award, giving rise to the above numbered appeals.

7. This Court has heard Mr.K.D.Pandya, learned Assistant Government Pleader and Mr.A.J.Patel, learned counsel for the claimant/claimants at length and in great detail. This court has also considered the paper book supplied by the learned counsel for the claimants, which includes the oral as well as documentary evidence adduced by the parties before the Reference Court.

8. From the record of the case it is evident that the claimants never claimed enhanced compensation either on the basis of yield or on the basis of comparable sale instances. What was relied upon by the claimants was previous award of the Reference Court relating to the lands of village Uchhad. As observed earlier, the assertion made by the witness for the claimants that the lands of village Uchhad were similar to the lands acquired in the instant case has almost gone unchallenged. The fact that the boundaries of two villages are adjoining to each other is not in dispute. It is well settled that previous award of the Reference Court relating to a village which has attained finality can be considered to be a good piece of evidence for the purpose of

determining market value of similar lands acquired subsequently from the adjoining village. Therefore, this Court is of the opinion that no error was committed by the Reference Court in placing reliance on the previous award of the Reference Court for the purpose of determining market value of the lands acquired in the instant case. On re-appreciation of evidence adduced before the Reference Court, this Court is of the opinion that the finding recorded by the Reference Court that the claimants were entitled to enhanced compensation on the basis of previous award of the Reference Court relating to the lands of village Uchhad cannot be interfered with and deserves to be upheld. However, it is agreed by the learned counsel for the claimants that the claimants would be entitled to reasonable rise in price of lands at the rate of Rs.0.71 Ps.per sq.mt. for 11 years and if calculation is made on this basis, the claimants in all would be entitled to Rs.14.91 Ps. per sq.mt., which is rounded off to Rs.15/- per sq.mt. for the purpose of convenience and not at the rate of Rs.20/- per sq.mt. as calculated by the Reference Court. Thus, the finding recorded by the Reference Court that the claimants are entitled to compensation at the rate of Rs.20/- per sq.mt. in all will have to

be modified by holding that the claimants would be entitled to compensation at the rate of Rs.15/- per sq.mt.

9. For the foregoing reasons, all the appeals partly succeed. The common judgment and award dated December 31,2004 rendered by the learned Civil Judge (SD), Bharuch in Land Acquisition Reference Nos. 2360 to 2369 of 1997 awarding in all compensation to the claimants at the rate of Rs.20/- per sq.mt. for their acquired lands, is hereby modified and it is held that the claimants in all would be entitled to compensation at the rate of Rs.15/- per sq.mt. The other benefits granted to the claimants by the impugned award are not interfered with at all and are hereby confirmed. The appeals are allowed to the extent indicated herein-above. There shall be no orders as to costs. The Registry is directed to draw the decree in terms of this judgment immediately.

(J.M.Panchal,J)

(Smt.Abhilasha Kumari,J)

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